

## 21 C.J.S. Courts § 115

Corpus Juris Secundum | May 2023 Update

### Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

### III. Creation and Constitution; Officers of Courts

#### A. Creation, Organization, and Abolition of Courts

#### 2. Exercise and Delegation of Power

### § 115. Municipalities

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  42(5)

**Municipalities have only such power with respect to the establishment or disestablishment of courts as is conferred upon them by constitutional provision or delegated to them by statute.**

Only the legislature has the authority to create the jurisdictional powers of municipal courts.<sup>1</sup> A municipality has no power, in the absence of authorization, to create a municipal or police court<sup>2</sup> or to define the authority of such courts and their procedure.<sup>3</sup> However, to the extent that the necessary constitutional and statutory authority exists, a municipality may create or bring into operation a city, municipal, or police court,<sup>4</sup> by or under a resolution or ordinance,<sup>5</sup> or a charter or amendment thereof,<sup>6</sup> or by a popular election.<sup>7</sup> A municipality may be authorized to regulate the exercise of jurisdiction conferred on a city court by the constitution.<sup>8</sup>

While a statute which, without constitutional authorization, delegates to municipalities the legislative power of creating municipal courts is invalid,<sup>9</sup> statutes authorizing municipalities under certain circumstances to bring into operation municipal or city courts whose organization and jurisdiction are prescribed by the statute do not constitute an unauthorized delegation of legislative power but rather a delegation only of the power to determine facts which bring the court into being.<sup>10</sup> Hence, the delegation of such power does not embrace the power to abolish a court thus created<sup>11</sup> unless there is also a delegation of power to determine facts upon which its disestablishment may be based.<sup>12</sup>

Authority conferred upon a municipality to create municipal or police courts may be exercised only within the limits of such authority.<sup>13</sup>

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

## Footnotes

- 1 Ohio—*Bolden v. Hodge*, 99 Ohio Misc. 2d 95, 716 N.E.2d 794 (Mun. Ct. 1999).  
Wash.—*City of Medina v. Primm*, 160 Wash. 2d 268, 157 P.3d 379 (2007).
- 2 Ohio—*State ex rel. Stanley v. Bernon*, 127 Ohio St. 204, 187 N.E. 733 (1933).  
**Mayor's court**  
Ohio—*State ex rel. Boston Heights v. Petsche*, 27 Ohio App. 3d 106, 499 N.E.2d 1250 (9th Dist. Summit County 1985).
- 3 N.Y.—*In re Siracusa*, 125 Misc. 882, 212 N.Y.S. 400 (Sup 1925).
- 4 Ill.—*People ex rel. Soble v. Gill*, 358 Ill. 261, 193 N.E. 192 (1934).
- 5 Kan.—*Brown v. Arkansas City*, 135 Kan. 453, 11 P.2d 607 (1932).  
Wis.—*State v. Outagamie County Board*, 175 Wis. 253, 185 N.W. 184 (1921).
- 6 Cal.—*Wallace v. Payne*, 197 Cal. 539, 241 P. 879 (1925).
- 7 Iowa—*State v. Birdsall*, 186 Iowa 129, 169 N.W. 453 (1918).
- 8 Md.—*City of Baltimore v. Bloecher & Schaff*, 149 Md. 648, 132 A. 160 (1926), *aff'd*, 275 U.S. 490, 48 S. Ct. 33, 72 L. Ed. 389 (1927).
- 9 Utah—*State v. Barker*, 50 Utah 189, 167 P. 262 (1917).
- 10 Kan.—*Brown v. Arkansas City*, 135 Kan. 453, 11 P.2d 607 (1932).  
Wis.—*State v. Outagamie County Board*, 175 Wis. 253, 185 N.W. 184 (1921).
- 11 Kan.—*Brown v. Arkansas City*, 135 Kan. 453, 11 P.2d 607 (1932).

12 Wis.—*State v. Outagamie County Board*, 175 Wis. 253, 185 N.W. 184 (1921).

13 N.Y.—*People v. Paris*, 181 A.D. 499, 168 N.Y.S. 836 (2d Dep't 1918).

---

End of Document

© 2023 Thomson Reuters. No claim to original U.S.  
Government Works.